

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

Tera M. Fenixx,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
Standard Insurance Company,	)	
	)	
Defendant.	)	
	)	

**NOTICE OF REMOVAL**

Defendant Standard Insurance Company removes this action from the Second Judicial District Court for the County of Bernalillo, New Mexico to the United States District Court for the District of New Mexico. This Court has diversity jurisdiction under 28 U.S.C. § 1332.

**I. Introduction.**

This lawsuit involves an insurance coverage dispute. Plaintiff Tera M. Fenixx alleges that she is entitled to benefits under a group policy of long-term disability insurance (Policy No. 645746-D) that Standard issued to her employer, the Albuquerque Public Schools. (Compl. at ¶ 5.) Removal is appropriate because this Court has diversity jurisdiction under 28 U.S.C. § 1332. Diversity jurisdiction exists because the parties are completely diverse and all of the information, taken together, proves that it is more probable than not that the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1446(c)(2)(B); *McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008) (the amount in controversy must be shown by a preponderance of the evidence).

**II. This Court Has Jurisdiction Under 28 U.S.C. § 1332.**

**A. There Is Diversity Of Citizenship.**

Fenixx alleges that she is a resident of New Mexico. (Compl. at ¶ 1.) Upon information and belief, Fenixx is a citizen of New Mexico.

Standard is a citizen of Oregon. It is an Oregon corporation with its principal place of business in Oregon.

**B. The Amount In Controversy Exceeds \$75,000.**

Fenixx submitted a claim for benefits under the group long-term disability policy, which Standard declined to pay. (Compl. at ¶¶ 8, 11.) Fenixx alleges that she has been and remains disabled and entitled to benefits under the group policy. (Compl. at ¶¶ 11-12, alleging entitlement to both own occupation and any occupation benefits.) The Complaint alleges breach of contract and violations of the New Mexico Unfair Insurance Trade Practices Act. (Compl. at ¶¶ 12-13.)

The value of the policy benefits that Fenixx has placed at issue are approximately \$174,180. This is comprised of approximately \$30,217 in allegedly past-due benefits and approximately \$143,963 in future benefits through the maximum benefit period (discounted to present value). *See Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, 1183-84 (10th Cir. 2000) (holding that future benefits under a disability insurance policy are properly considered when determining the amount in controversy).

The contract benefits, alone, exceed this Court's minimum jurisdictional requirement. In addition to the policy benefits, however, Fenixx seeks "direct and consequential, or indirect" damages, punitive damages, and attorneys' fees. (Compl. at

¶¶ 12-13, Prayer.) Accordingly, all the information, taken together, proves that it is more probable than not that the amount in controversy exceeds this Court's jurisdictional threshold of \$75,000.

### **III. This Removal Is Timely**

1. Fenixx filed the Complaint in state court on February 12, 2015.
2. The New Mexico State Superintendent of Insurance received a copy of the Summons and Complaint on February 23, 2015 and mailed a copy of the Summons and Complaint to Standard on February 23, 2015.
3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), because 30 days have not expired since the Summons and Complaint were served.

### **IV. Standard Has Met All Other Requirements For Removal**

1. Standard has satisfied the other requirements for removal under 28 U.S.C. § 1446 and D.N.M. LR-Civ. 81.1.
2. Standard has served a copy of this notice upon the plaintiff.
3. Standard has this date filed a copy of this Notice of Removal with the Clerk of the Second Judicial District Court for the County of Bernalillo, New Mexico as required by 28 U.S.C. § 1446(d). *See* Exhibit A.
4. Pursuant to 28 U.S.C. § 1446(a) and D.N.M. LR-Civ 81.1, Standard has attached copies of all process, pleadings, and other orders served upon it, along with all records and proceedings from the state court action. *See* Exhibit B.

Accordingly, defendant Standard Insurance Company removes the above entitled action from the Second Judicial District Court for the County of Bernalillo, New Mexico to the United States District Court for the District of New Mexico.

DATED: March 24, 2015

LEWIS ROCA ROTHGERBER LLP

By: /s/ Ross L. Crown

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2015 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing and mailed a copy to the following:

Richard Fischer  
The Fischer Law Firm  
620 N. Grant Avenue, Suite 401  
Odessa, TX 79761  
Attorney for Plaintiff

/s/ Ross L. Crown

Ross L. Crown